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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,480	05/02/2001	John M. Belcea	1710.22	2557

7590 05/23/2005

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EXAMINER

LY, ANH VU H

ART UNIT PAPER NUMBER

2667

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,480

Applicant(s)

BELCEA, JOHN M.

Examiner

Anh-Vu H. Ly

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-73 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 51-71 and 73 is/are rejected.
- 7) ☒ Claim(s) 72 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>April 07, 2003</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 51-53, 55-58, 60-66 and 73 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 14-27 and 31 of prior U.S. Patent No. 6,807,165. This is a double patenting rejection.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 54 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,807,165 in view of Fletcher (US Patent No. 6,072,797). Belcea ('165) discloses a radio terminal for use in ad-hoc, peer-to-

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peer radio system. Belcea does not disclose generating information on the COS being transmitted and generating information on the type of message being sent comprising the capability of reporting at least one of the following types of COS information: voice type information, data type information, and video type information, whereby routing of a call is based also on the type of COS information being transmitted. Fletcher discloses (col. 6, lines 55-58) that the routing path 29 illustrated in Fig. 1, may be selected from a number of different potential routing paths based upon, for example, class of service of the hops in the path. This implies that, the type of message being transmitted, indicated by the class of service field, identifies whether the message is data, voice, and/or video. It would have been obvious to one having ordinary skill in the art at the time the invention was made to identify the class of service of a call in Belcea's system, as suggested by Fletcher, to accommodate different call connections with different associated quality of service.

Claim 59 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,807,165 in view of Narvinger et al (US Patent No. 6,868,075 B1). Belcea ('165) discloses a radio terminal for use in an ad-hoc, peer-to-peer system that provides collision free channel access. Belcea does not disclose wherein inter frame time gap has a length different than time slots. Narvinger discloses in Figs. 7-10 that the inter frame time gap has a different length than time slots of the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an adaptive inter frame time gap in Belcea's system, as suggested by Narvinger, to accommodate different transmission delays in wireless network.

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Claims 67-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,807,165 in view of Fletcher (US Patent No. 6,072,797). Belcea ('165) discloses a method of selecting an optimal routing path of a call in an ad-hoc, peer-to-peer radio system. Belcea does not disclose determining the COS of a call to be transmitted from a respective transmitting radio terminal, and selecting an optimal path based on the class of service and wherein, the step of determining the class of service comprises selecting from one of the following: voice transmission, data transmission, and video transmission. Fletcher discloses (col. 6, lines 55-58) that the routing path 29 illustrated in Fig. 1, may be selected from a number of different potential routing paths based upon, for example, class of service of the hops in the path. Herein, voice and video transmissions are given higher priority than data transmission. Therefore, the selected routing path is a path with short delays or latency. It would have been obvious to one having ordinary skill in the art at the time the invention was made to identify class of service of a call in selecting optimum routing path in Belcea's system, as suggested by Fletcher, to accommodate different call connections with different associated quality of service.

Allowable Subject Matter

3. Claim 72 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Li et al (US Pub 2003/0087603 A1) discloses framing method and the synchronous wireless system therewith.

Ho (US Patent No. 6,747,959 B1) discloses voice data integrated multi-access by self-reservation and blocked binary tree resolution.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh-Vu H Ly whose telephone number is 571-272-3175. The examiner can normally be reached on Monday-Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

avl


CHI PHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2667

5/20/15